

**Central Administrative Tribunal
Madras Bench**

MA/310/00071/2019 (in)(&) OA/310/00170/2019

Dated 13th March Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. R.Ramanujam, Member(A)
&
Hon'ble Mr.P.Madhavan, Member(J)**

1. K.Kandasamy
2. K.Rajarajacholan
3. M.Samathuvam
4. R.Kannan .. Applicants

By Advocate **M/s.P.Chandrasekaran**

Vs.

1. Union of India, rep by the
Chairman, CBEC,
North Block,
New Delhi 110 001.
2. Union of India, rep by the
Department of Personnel & Training,
North Block, New Delhi.
3. The Principal Chief Commissioner of Central Tax,
121, Mahatma Gandhi Salai,
Nungambakkam, Chennai 600 034.
4. The Chief Commissioner of Customs,
(Preventive),
No.1, Williams Road, Cantonment,
Trichy 620 001.
5. The Commissioner of GST Central Excise,
No.1, Foulks Compound,
Anaimedu, Salem 636 001.
6. The Commissioner of Customs
(Preventive),
No.1, Williams Road, Cantonment,
Trichy 620 001. .. Respondents

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

MA for joining the applicants together and filing a single application is allowed.

2. The above OA is filed seeking the following relief:-

“To direct the respondents to grant one Notional Increment for the period from 01.7.2016 to 30.6.2017 to the applicants 3 & 4 and 01.7.2017 to 30.6.2018 to the 1st and 2nd applicants as they have completed one full year of service though their increment fell on 01.7.2017 and 01.7.2018 respectively, for the purpose of pensionary benefits.”

3. According to the applicants, they retired from service on 30th June of their respective years of superannuation and since they will be completing an year of service on 1st of July they are entitled to one more increment and it has to be counted for pensionary benefits.

4. The very same question came up before this Bench in OA 1710/2018 & Batch and the claim raised by the applicants therein was rejected on the basis of the law laid down by the Hon'ble Apex Court. The Hon'ble Supreme Court in ***Chief General Manager v. U.V.George & Others (2008) 14 SCC 699*** had laid down the law relating to the retirement of a Central Government employee under FR 56. It was held that a person is considered as retired on his attaining 60 years and they are permitted to continue till 30.6.18 only for the purpose of pay and allowances only. ***“We are unable to countenance with the decision of the Tribunal and the High Court. As already noticed they were retired w.e.f. 16.12.95 and 03.12.95 respectively, but***

because of the provision under FR 56(a) they were allowed to retire on the last date of the month, the grace period of which was granted to them for the purpose of pay and allowances only. Legally they were retired on 16.12.95 and 03.12.95 respectively and therefore, by no stretch of imagination can it be held that their pensionary benefits can be reckoned from 1.1.96. The relationship of employer and employee was terminated in the afternoon of 16.12.95 and 3.12.95 respectively.”

5. The same principle was followed by the Hon'ble Madras High Court in *A.V.Thiyagarajan vs. The Secretary to Government (W.P.No.20732/2012 dated 27.11.2012)* and by Hon'ble Karnataka High Court in *Union of India & 3 Others v. YNR Rao (WP 18186/2003)*. In YNR Rao's case it is observed in Para-5 that -

“5. But for the provisions of FR 56, which provides that a Government Servant shall retire from service on the afternoon of last date of the month in which he had attained the age of 58 years, the respondent, who was born on 9.3.1937 would have retired on 8.3.1995. The provision for retirement from service on the afternoon of the last date of the month in which the Government Servant attains the age of retirement instead of on the actual completion of the age of retirement in FR 56 was introduced in the year 1973-74 for accounting and administrative convenience. What is significant is the proviso to clause (a) of FR 56 which provides that an employee whose date of birth is first of a month, shall retire from service on the afternoon of the last date of the preceding month on attaining the age of 58 years. Therefore, if the date of birth of a government servant is 1.4.1937 he would retire from service not on 30.4.1995, but on 31.3.1995. If a person born on 1.4.1937 shall retire on 31.3.1995, it would be illogical to say a person born on 9.3.1937 would retire with effect from 1.4.1995. That would be the effect, if the decision of the Full Bench of the CAT, Mumbai, is to be accepted. Therefore, a government servant retiring on the afternoon of 31.3.1995 retires on 31.3.1995 and not from 1.4.1995. We hold that the decision of the Full Bench (Mumbai) of the CAT that a government servant retiring on the afternoon of 31st March is to be treated as retiring with effect from the first day of April, that is same as retiring on the forenoon of first of April, is not good law.”

The grace period so given cannot be tagged with his substantive service for counting

further increments.

6. Further, Rule 10 of CCS (Pension) Rules does not permit to take into consideration emoluments which fell due after retirement.

7. From the above, it can be seen that an employee legally retires on attaining superannuation (60 years) and as per the decision, the relationship of employer employee is terminated. They continue thereafter as a grace period given to the employee under FR 56. There is no provision to consider this grace period alongwith his service prior to his retirement. So, we are of the view that the applicants had failed to make out a prima facie case. We are bound to follow the law laid down by the Hon'ble Supreme Court and there is no merit in the contentions raised by the applicants.

8. Hence we dismiss the OA accordingly. No costs.

(P.Madhavan)
Member(J)

13.03.2019

(R.Ramanujam)
Member(A)

/G/